REMARKS

This is a full and timely response to the non-final Official Action mailed **December 29, 2008** (the "Office Action" or "Action"). Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

Claim Status:

By the forgoing amendment, various claims have been amended. No claims are added or cancelled. Thus, claims 1-25 are currently pending for further action.

Allowable Subject Matter:

In the outstanding Office Action, the Examiner indicated the presence of allowable subject matter in claims 13-25. Applicant wishes to thank the Examiner for this identification of allowable subject matter.

The recent Office Action also contains a statement of reasons for the allowance or allowability of claims 13-25. Applicant agrees with the Examiner's conclusions regarding patentability, without necessarily agreeing with or acquiescing in the Examiner's reasoning. In particular, Applicant believes that the application is allowable because the prior art fails to teach, anticipate or render obvious the invention as claimed, independent of how the claims or claimed subject matter may be paraphrased.

Rejections under 35 U.S.C. § 101:

In the recent Office Action, claims 1-12 were rejected under 35 U.S.C. § 101 for being directed to non-statutory subject matter. These claims have been carefully reviewed in light of the Examiner's comments.

In a 2008 en banc decision, the Federal Circuit affirmed a final decision by the Board of Patent Appeals and Interferences ruling that a claimed method of hedging the risk of bad weather through commodities trading was not patent eligible under 35 U.S.C. § 101. *In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385 (Fed. Cir. 2008). The Court applied a "machine-or-transformation test" as the only test to be used in determining whether a claimed process is eligible for patenting under § 101. The decision held that a claimed process must either (1) be tied to a particular machine or apparatus, or (2) transform a particular article into a different state or thing.

Although the Court identified the Bilski test as the only test, it added two corollaries. First, a mere field-of-use limitation is generally insufficient to render an otherwise ineligible method claim patent- eligible. This means the machine or transformation must impose meaningful limits on the method claim's scope to pass the test. Second, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such a data gathering or outputting, is not sufficient to pass the test.

In light of this rejection, and the test under Bilski, independent claims 1 and 7, and various dependent claims have been amended herein to address the issues raised by the Examiner under 35 U.S.C. § 101. Specifically, amendments were made to explicitly recite that a "display device" is employed in the methods of claims 1 and 7. Support for the amendment to claims 1 and 7 can be found in Applicant's originally filed specification at, for example, paragraph [0022].

As required by the "machine-or-transformation test," claims 1 and 7 recite a process (method) that is tied to a particular machine or apparatus. Specifically, both claims 1 and 7 recite both a display device as well as an image capture device. Thus, the methods of claim 1

and 7 are supported by a particular machine or apparatus; the display device, the image capture device, and/or both the display device and image capture device working together as a particular system of machines or apparatus.

Further, the inclusion of a display device and image capture device in claims 1 and 7 do, in fact, impose meaningful limits on the method claims' scope by limiting the methods of claims 1 and 7 to require the presence of both the display device and image capture device in the process. Finally, the display device and image capture device are not recited in an insignificant step, but are required in forming the resultant image on the display device.

Following these amendment, all the remaining claims are believed to be in compliance with 35 U.S.C. § 101 and notice to that effect is respectfully requested.

Conclusion:

In view of the foregoing arguments, all claims are believed to be in condition for allowance over the prior art of record. Therefore, this response is believed to be a complete response to the Office Action. However, Applicant reserves the right to set forth further arguments in future papers supporting the patentability of any of the claims, including the separate patentability of the dependent claims not explicitly addressed herein. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed.

The absence of a reply to a specific rejection, issue or comment in the Office Action does not signify agreement with or concession of that rejection, issue or comment. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment. Further,

for any instances in which the Examiner took Official Notice in the Office Action, Applicants expressly do not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03.

If the Examiner has any comments or suggestions which could place this application in better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Respectfully submitted,

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